

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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MICHAEL L. BARBER,

Plaintiff,

v.

Case No. 04-C-449

BRETT J. GALINDO, VILLAGE OF CRIVITZ,  
a municipal corporation, JOHN R. MISKIMINS,  
DAIMLER CHRYSLER FINANCIAL SERVICES,  
INC., a foreign corporation,

Defendants,

and

AUTO & MARINE, INC., a Wisconsin corporation,

Defendant and Third-Party Plaintiff,

v.

DAIMLER CHRYSLER SERVICES NORTH  
AMERICA, LLC.,

Third-Party Defendant.

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**ORDER GRANTING DEFENDANT'S MOTION TO COMPEL  
DISCOVERY AND SANCTIONS**

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This matter is before me on a motion by the defendants to compel plaintiff to cooperate in a deposition on damage issues and for sanctions pursuant to Rule 37(d)(1), Fed. R. Civ. P. In support of the motion, the defendants allege that the plaintiff was unprepared to testify regarding his damages at the discovery deposition held on May 23, 2005. After plaintiff asserted on the record

that he could assemble the damage information supporting his claim within two to three weeks, the parties agreed to obtain an order to extend the time for discovery so that the deposition could be completed. A continuation of the deposition was then set for June 20, 2005, in Green Bay, Wisconsin. Plaintiff failed to appear for his deposition, and when reached at his home in Oconto Falls by telephone, he stated that he was unprepared to testify and document his damages. Defendants then agreed with plaintiff's counsel to attempt a further deposition of the plaintiff on August 4, 2005, in Green Bay, Wisconsin. In their motion for sanctions, defendants seek recovery of their actual costs and attorneys' fees relating to the June 20th deposition and an order compelling plaintiff to appear, testify and document his damages at a deposition in Green Bay now scheduled for August 4, 2005, at 9:30 a.m.

The defendants filed their motion under Civil L.R. 7.4, which requires a response by the opposing party within 5 days of service. Plaintiff has not responded to the motion and I therefore conclude that it should be granted. Defendants are clearly entitled to discovery concerning the damages plaintiff claims he sustained. His failure to cooperate with the discovery process warrants the sanctions requested by the defendant.

Accordingly, **IT IS HEREBY ORDERED** that plaintiff shall pay the costs and attorneys' fees incurred by the defendants in preparing for and attending the previously scheduled deposition on June 20, 2005. Counsel for the defendants shall submit an affidavit setting forth the fees and costs within the next 30 days. Plaintiff shall have 10 days to file any objection.

**IT IS FURTHER ORDERED** that the plaintiff shall appear at the scheduled deposition on August 4, 2005, at 9:30 a.m. and further that he shall be prepared to testify concerning the damages he claims and provide whatever supporting documentation may exist. Failure of the

plaintiff to provide the damage information requested by the defendants may result in a dismissal of this action.

Dated this 3rd day of August, 2005.

s/ William C. Griesbach

William C. Griesbach

United States District Judge